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Supreme Court of the United States.

October Term, 1900.

Filed Jan. 7, 1901.

No. 463.

FLORIDA CENTRAL & PENINSULAR RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

WILLIAM H. REYNOLDS, AS COMPTROLLER OF THE STATE OF FLORIDA, AND JOHN A. PEARCE, AS SHERIFF OF LEON COUNTY OF SAID STATE, DEFENDANTS IN ERROR.

Brief for Defendants in Error Upon Motion to Dismiss Writ of Error.

W. B. LAMAR,

ATTORNEY-GENERAL FOR THE STATE OF FLORIDA,
COUNSEL FOR DEFENDANTS IN ERROR.

THE H. & W. B. DREW COMPANY JACKSONVILLE, FLA. 80987

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Plaintiff in Error,
VS.
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Defendants in Error.

Number 463.

Brief of Counsel for Defendants in Error.

The motion to dismiss the writ of error is predicated upon two grounds, viz:

FIRST—because no federal question was involved in the case, or was raised in the record, or was decided by the Supreme Court of the State of Florida adversely to the plaintiff in error;

SECOND—because the writ of error was not brought within two years after the entry of the final judgment or decree of the Supreme Court of the State of Florida.

The return to the writ of error embraces a transcript of the record of the original bill and the proceedings thereon, a transcript of the record of the supplemental bill in the nature of a bill of review and the proceedings thereon, and a transcript of the record of the bill of review with the proceedings thereon. The bill of review does not constitute a part of the original suit but is an independent proceeding. Cole vs. Miller, 32 Miss. 89; 2 Hoff. Chr. Pr. 12.

Therefore the return to the writ of error embraces at least two separate and distinct transcripts of the record of two separate and independent proceedings. It occurs to us that a writ of error should have been brought in each one of these suits in order to bring

them both to this Court for examination and review. However for the purposes of this motion we will treat the transcripts of the record returned here as those of two separate and independent proceedings, and also as that of one suit.

Adverting then to the transcript of the record of the bill of review and the proceedings thereon it will be observed that this bill is predicated upon new matter discovered since the final decree and is limited to that; and that the decision and final decree thereon by the Supreme Court of the State of Florida relates to a matter of practice only and does not involve any federal question whatever. Therefore this Court has no jurisdiction to examine and reverse said final judgment or decree.

125 U. S. 18; 127 U. S. 216; 129 U. S. 506; 132 U. S. 554; 133 U. S. 65; 138 U. S. 496; 123 U. S. 540; 152 U. S. 377; 153 U. S. 436; 147 U. S. 490; 154 U. S. 130; 159 U. S. 660; 150 U. S. 18; 163 U. S. 207; 162 U. S. 283; 170 U. S. 182.

The final decree in the original suit was made and entered by the Supreme Court of the State of Florida on the 17th day of March, A. D. 1897, and the writ of error was brought on the 24th day of October, A. D. 1900, and more than two years had elapsed after the entry of said decree and before the bringing of said writ of error; consequently said writ was barred. Rev. Stat. U. S. Sec. 1008.

If the writ is barred by the statute the objection may be made by motion. Brooks vs. Norris, 11 Howard 204.

But treating the bill of review and the proceedings thereon as constituting a part of the original suit and the transcripts of the records as those of one suit only; nevertheless the motion ought to prevail because the questions involved in this case are identically the same as those which were presented and decided by this Court in the case of the Louisville & Nashville Railroad Company vs. Palmes, 109 U. S. 244, and the decision of this Court in that case has been adopted and followed by the Supreme Court of Florida in deciding this case. Bloxham et al. vs. Florida Central & Peninsular Railroad Company, 35th Florida Reports, 625.

W. B. LAMAR,

Attorney-General of Florida and Solicitor for Defendants.

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BRIEF FOR DEFENDANTS IN ERROR.

W. B. LAMAR,
Attorney General of Florida and Solicitor for Defendants in Error.

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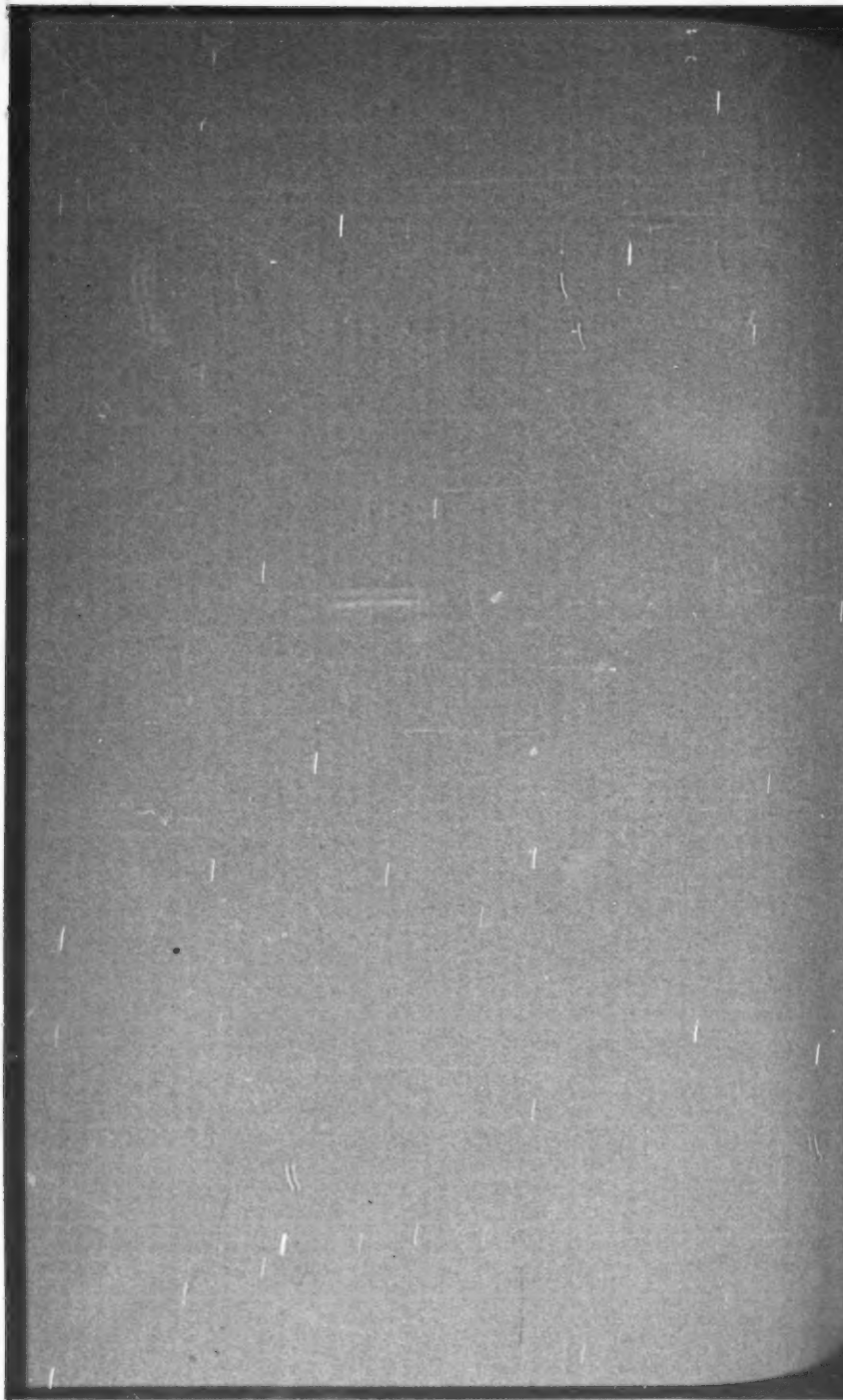

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BRIEF FOR DEFENDANTS IN ERROR.

In support of the first ground of our motion to dismiss the writ of error we will state, in addition to what has already been stated in our brief which was filed therewith, that the supreme court of Florida, at its January term, 1895, made a final decision of the original case and left nothing for the circuit court to do except to enter a decree in compliance with the mandate sent down.

Bloxham, compt., and Pearce *vs.* F. C. & P. R. R. Co., 35 Fla. Repts., 625.

Printed Record, pp. 227 *et seq.*

Nevertheless the circuit court permitted the railroad company to file a supplementary bill, in the nature of a bill of

review, without the leave of the supreme court of Florida; and afterward, on appeal, the said supreme court directed the circuit court to dismiss this bill because it was filed without its leave, and to enter a final decree in accordance with its former judgment, and at the same time granting an order permitting the railroad company, within ninety days after the entry of such decree by the circuit court, to apply to the said circuit court for leave to file a bill of review to the *extent of the line of railroad from Jacksonville to Chattahoochee and branches, on account of alleged newly discovered matter* (Bloxham, compt., and Pearce *vs.* F. C. & P. R. R. Co., 39 Fla. Repts., 243; printed Record, pp. 245 *et seq.*).

The circuit court afterwards, on the 19th of June, 1897, entered a final decree in accordance with the final judgment of the supreme court of Florida, rendered at the January term thereof, 1895 (printed Record, pp. 136, 137).

And on a petition for that purpose the circuit court granted the railroad company leave to file a bill of review not only to so much of the decree as affected the line of railroad from Jacksonville to Chattahoochee and branches, but also to so much of said decree as affected all of the lines of railroad involved in said litigation; and not only on the ground of newly discovered matter, but also for errors of law apparent on the record (printed Record, pp. 141 and 142).

This was entirely beyond the scope of the permission given by the supreme court of Florida; and the circuit court had no jurisdiction or authority to entertain an application to review said decree as to any other railroad than the line from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, or upon any other ground than that of newly discovered matter.

And a writ of prohibition was issued by the supreme court of Florida forbidding said circuit court from exercising jurisdiction of said bill of review beyond the scope of the permission granted by it (State of Florida *ex rel. vs.* John F. White, judge, 40 Fla. Repts., 297).

Therefore the bill of review was thus limited to that part of the decree which affected the line of railroad extending from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, on account of newly discovered matter only. It will be observed that the newly discovered matter which is alleged in said bill of review relates exclusively to the question whether Edward J. Reed and associates, from whom the plaintiff in error deraigned its title to the line of railroad from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, became *bona fide* purchasers thereof for a valuable consideration, without notice of any tax lien thereon for the years 1879, 1880, and 1881, and the only question which was decided by the supreme court of Florida in this review suit was whether the new matter alleged in the bill of review was not known, or could not by the use of reasonable diligence have been known, to this plaintiff in error or its agents in time for use before the hearing of the original cause (Reynolds *et al. vs.* F. C. & P. R. R. Co., Fla. Repts; printed Record, p. 254).

This question was decided adversely to this plaintiff in error, and the court deemed it unnecessary to decide upon the existence, character, or effect of such new matter.

It is apparent, therefore, that no Federal question was involved in the proceedings and decided by the supreme court of Florida in the review suit; and the contention by the plaintiff in error that the Federal question which was raised by the pleadings in the original suit was preserved, repeated, and enlarged in the bill of review, we think, is not supported by the record.

In framing a bill of review it is necessary to state the former bill and the proceeding thereon; the decree and the point in which the party exhibiting the bill of review conceived himself aggrieved by it, and the ground of law or new matter discovered upon which he seeks to impeach it (Mitford's Eq. Pl., 106).

And this plaintiff in error in framing his bill of review

has complied with this requirement, and stated therein the former or original bill and the proceedings thereon, the decree and the point in which it conceived itself aggrieved by it, and the new matter discovered upon which it seeks to impeach it. Although the Federal question which was involved in the original suit and therein decided by the supreme court of Florida was *recited* in the bill of review, nevertheless this question was not again raised by the pleadings in the review suit and decided therein by the supreme court of Florida. Upon an examination of the bill of review it will be observed that the plaintiff in error did not complain of the final decree of the circuit court because the Federal question which was raised by the proceedings in the original suit had been decided adversely to it. That was not the point of grievance, but the point of grievance was the decision of the court that *Edward J. Reed and associates, from whom the plaintiff in error deraigned its title to the railroad from Jacksonville to Chattahoochee, with branches to Monticello and St. Marks, were not bona fide purchasers thereof for a valuable consideration, without notice of any tax lien thereon for the years 1879, 1880, and 1881*, and the newly discovered matter was alleged in the bill of review for the purpose of impeaching said final decree in this particular. Therefore we contend that no Federal question was raised by the pleadings in the review suit. But even if such a question had been raised by said pleadings in the review suit it was not decided by the supreme court of Florida, and in the absence of such decision the decree of said supreme court is not reviewable by this court on a writ of error. Besides, the order of the chief justice of the supreme court of Florida allowing this writ of error limits it to the final decree of said supreme court on the 26th day of June dismissing the bill of review (printed Record, p. 223).

Furthermore, the attorneys for the plaintiff in error admit in their brief, on pages 7 and 8, that said writ of error was allowed to review the said decree of June 26, 1900, but con-

tend that this was the only final decree which could have been reviewed by this court. Be that as it may, this writ of error, being limited in its operation to a review of the decree of the supreme court of Florida rendered on the 26th day of June, 1900, cannot be extended in its operation to a review also of the decree of said court rendered on the 19th day of March, 1895, for such an extension of its operation would defeat the limitation prescribed by section 1008, United States Revised Statutes.

Both of these decrees were rendered by the same court, between the same parties, and are final. But the question raised by the pleading and decided in the original suit, in which the court rendered its final decree on the 19th day of March, 1895, and those raised by the pleadings and decided in the review suit, in which the court rendered its final decree on the 26th day of June, 1900, are entirely different. It will be observed that in the original suit a Federal question was raised by the pleadings and decided by the court; but in the review suit no Federal question was raised by the pleadings and decided by the court. (See printed Record, p. 260.)

In this connection we will offer this observation, that after the supreme court of Florida had rendered its final decree on the 19th day of March, 1895, this plaintiff in error filed its petition for a rehearing, but the court denied the prayer thereof (printed Record, pp. 46 and 48).

And no other or further proceedings were taken or had to change, modify, or reverse said final decree.

We will offer this further observation that the bill of review, which was afterwards filed by this plaintiff in error, has no relation to the said final decree of the supreme court of Florida, which was rendered on the 19th day of March, 1895, and does not seek to review, change, modify, or reverse it, but has relation exclusively to the final decree which was rendered by the circuit court of Leon county of the State of Florida on the 19th day of June, 1897, and seeks

to review, change, modify, and reverse it, upon the *ground of alleged newly discovered matter* (printed Record, pp. 177 and 178—1880 and 1881).

Therefore this bill of review and the proceedings thereon did not prevent this plaintiff in error from suing out a writ of error to the said final decree of the supreme court of Florida, which was rendered on the 19th day of March, 1895, within two years after the entry thereof, and bringing it before this court for a review of the Federal question which was therein decided.

No writ of error has ever been allowed or sued out to said final decree by this plaintiff in error, and in the absence of such writ said decree is not reviewable by this court.

But in case the motion to dismiss the writ of error should be denied, we will now discuss the several assignments of error.

The denial by the supreme court of Florida of the exemption of the Florida Central and Peninsular railroad from taxation constitutes the first assignment of error.

The plaintiff in error contended that these railroads were exempted from taxation under section 18 of "the internal improvement act," chapter 610, Laws of Florida of 1855, which reads as follows:

"SEC. 18. *Be it further enacted*, That the capital stock of any railroad company accepting the provisions of this act, shall be forever exempt from taxation, and the roads, their fixtures and appurtenances, including workshops, warehouses, vehicles, and property of every description needed for the purpose of transportation of freight and passengers, or for the repair and maintenance of the roads, shall be exempt from taxation while the roads are under construction, and for the period of thirty-five years from their completion, and that all the officers of the companies, and servants, and persons in the actual employment of the companies, be and are hereby exempt from performing ordinary patrol

or militia duty, working on public roads and serving as jurors."

And that such exemption or immunity was continuing and was an incident of the property itself, and followed it into the hands of subsequent purchasers, including the plaintiff in error, and was not a personal privilege, limited to the corporation that built said railroads.

The identical questions involved in this contention were decided by the supreme court of Florida at the June term thereof, 1882, in the case of Palmes *vs.* Louisville and Nashville Railroad Company (19th Fla. Repts., 231), adversely to the case of this plaintiff in error, and that decision was afterwards brought to this court by writ of error for review, and affirmed in November, 1883 (Louisville and Nashville Railroad Company *vs.* Palmes, 109 U. S. Repts., 244).

These decisions, we think, settle these questions and put them beyond further controversy.

The plaintiff in error further contended that these railroads were exempted from the taxes assessed on them because it and those from whom it deraigned title were *bona fide* purchasers thereof for a valuable consideration without notice of any tax lien thereon for the years 1879, 1880, and 1881.

The supreme court of Florida decided that neither the plaintiff in error nor those from whom it deraigned its title were such *bona fide* purchasers of said railroad. This was a decision of a question of *fact*, and not of law, and involved no Federal question whatever; consequently this court will not review it.

The decision by the supreme court of Florida that so much of the original bill as sought a recovery of the sum of $140,812 for the taxes which were paid by the Florida Railway and Navigation Company was a suit against the State

and should be dismissed constitutes the second assignment of error.

The judgment of the court in this particular is correct, whether the reasons assigned therefor are erroneous or not. It is true that the judgment is based upon the fact that the suit was against the State; but even if this was not so, yet it could be supported upon another ground. If the plaintiff in error was entitled to recover this money, his remedy was by an action at law and not by a suit in equity (Singer Manfg. Co. *vs.* Wright, 141 U. S. Repts., 697; Preston *vs.* Preston, 12 Pick., 14).

But it is apparent that no Federal question was involved in this decision. Therefore this court will not review it.

The decision by the supreme court of Florida that the statute of Florida, chapter 3558, Laws of 1885, was constitutional and valid constitutes the third assignment of error.

It appears also that no Federal question is involved in this decision, and likewise none is involved in the remaining assignments of error, numbered 4, 5, 6, and 7. Therefore this court will not review them.

We can discover no merit in any of the assignments of error, and necessarily conclude that this writ of error was prosecuted for delay only.

W. B. LAMAR,
Attorney General of Florida and
Solicitor for Defendants in Error.